

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

EDGAR R. GARCIA,

Plaintiff,

v.

PATRICK GLEBE,

Defendant.

CASE NO. C14-5990 RBL-JRC

ORDER REGARDING EXTENSION
AND DIRECTING PLAINTIFF TO
SEEK AN ORDER OF
SUBSTITUTION

The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States Magistrate Judge J. Richard Creatura. The Court's authority for the referral is 28 U.S.C. § 636(b)(1)(A) and (B), and local Magistrate Judge Rules MJR3 and MJR4.

Presently before the Court is the issue of the suspension of plaintiff's attorney. *See* Dkt. 30. On June 16, 2016, plaintiff's wife attempted to file a Motion for an Extension of Time to Locate a New Attorney ("Motion For Extension"), and informed the Court that plaintiff's attorney has been suspended. *See id.* Although plaintiff's wife has attempted to request an extension on behalf of plaintiff, the Motion is not properly before the Court based on her non-attorney status and based on plaintiff's failure, among other things, to file a motion to proceed on

1 his own behalf or appoint another attorney. *See* Local Rules W.D. Wash. Rule 83.2(b)(4).
2 Therefore, plaintiff is advised of some of the relevant Rules herein and directed to take action
3 accordingly, such as by filing a motion to proceed on his own behalf or by appointing another
4 attorney.

5 6 **BACKGROUND**

7 On August 21, 2015, counsel (Ms. Mallonee) appeared on behalf of plaintiff. Dkt. 24.
8 On May 20, 2016, defendant filed a Motion for Summary Judgment in this matter. Dkt. 29. That
9 motion was noted on the motion calendar for June 17, 2016. Pursuant to Local Rules W.D.
10 Wash. Rule 7(d)(3), plaintiff's response brief to that motion was due on June 13, 2016. On June
11 16, 2016, plaintiff's wife attempted to obtain an extension to file a response to defendant's
12 Summary Judgment Motion. Dkt. 30. Meanwhile, defense counsel received an email from
13 plaintiff's attorney, Ms. Mallonee, informing him that she currently was suspended from the
14 practice of law and will not be representing the plaintiff with regard to the State's pending
15 Motion for Summary Judgment. Dkt. 31 at 1. Ms. Mallonee, however, has not filed a notice of
16 withdrawal in this matter.

17 On June 24, 2016, defendant responded to the Motion For Extension. Dkt. 31.
18 Defendant has no objection to a 45 day extension of time for plaintiff to file his responsive brief
19 to defendant's Motion for Summary Judgment. *Id.* at 2.

20 **DISCUSSION**

21 The Local Rules provide guidance for this situation and plaintiff is advised to take notice
22 of them. It is clear that plaintiff desires an extension and defendant does not object. Plaintiff,
23 however, has failed to comply with the Local Rules, and has failed, among other things, to file a
24 motion to proceed on his own behalf or to appoint alternative counsel. *See* Local Rules W.D.

1 Wash. Rule 83.2(b)(4). Plaintiff cannot take any step in this case until this step, as well as other
 2 relevant steps, are taken. *See id.* According to Local Rules W.D. Wash. Rule 83.2(b)(4):

3 (4) When a party is represented by an attorney of record in a case,
 4 the party cannot appear or act on his or her own behalf in that case,
 5 or take any step therein, until after the party requests by motion to
 6 proceed on his or her own behalf, certifies in the motion that he or
 7 she has provided copies of the motion to his or her current counsel
 8 and to the opposing party, and is granted an order of substitution
 9 by the court terminating the party's attorney as counsel and
 10 substituting the party in to proceed *pro se*; provided, that the court
 11 may in its discretion hear a party in open court, notwithstanding
 12 the fact that he or she is represented by an attorney.

13 Local Rules W.D. Wash. Rule 83.2(b)(4).

14 It is clear that when counsel for plaintiff becomes unable to act due to suspension, before
 15 any further proceedings are had in this action on plaintiff's behalf, plaintiff must either appoint
 16 another attorney or seek an order of substitution to proceed *pro se*. Local Rules W.D. Wash.
 17 Rule 83.2(b)(5) provides:

18 (5) When an attorney suddenly becomes unable to act in a case due
 19 to death, incapacity, removal or suspension, the party for whom he
 20 or she was acting as attorney must, before any further proceedings
 21 are had in the action on his or her behalf, unless such party is
 22 already represented by another attorney, (i) appoint another
 23 attorney who must enter an appearance in accordance with
 24 subsection (a) or (ii) seek an order of substitution to proceed *pro se*
 in accordance with subsection (b)(4).

Local Rules W.D. Wash. Rule 83.2(b)(5).

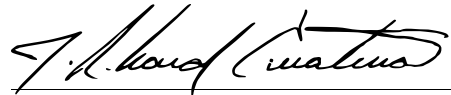
CONCLUSION

On or before August 1, 2016, plaintiff shall have another attorney file an appearance on
 his behalf or file a *pro se* appearance himself. If no such appearances are forthcoming or plaintiff
 does not respond in writing to this order within the time set forth herein, this case may be
 dismissed without prejudice and without further notice.

1 Because it is clear that plaintiff needs an extension in order to file his Response to
2 Defendant's Motion for Summary Judgment, it is hereby ordered that plaintiff has until August
3 18, 2016 to file his Response. Defendant's Reply will be due on August 24, 2016.

4 Counsel for plaintiff shall inform the court, in writing, of plaintiff's address(es) and
5 phone number(s) within ten days hereof. Counsel shall also forward all correspondence to
6 plaintiff, including this order, for a period of 30 days hereafter or until substitute counsel has
7 appeared, whichever first occurs. The Clerk's Office is hereby directed also to send a copy of
8 this Order to the address provided by plaintiff's wife in her letter to the Court: 1413 E. 34th St.
9 Tacoma, WA 98404.

10 Dated this 7th day of July, 2016.

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12 J. Richard Creatura
13 United States Magistrate Judge
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